

REMARKS

This Amendment, which is filed concurrently with a Request for Continued Examination (RCE) and a one-month request for extension of time, satisfies the submission requirement of 37 C.F.R. § 1.114 and responds to the final Office Action dated 29 April 2008. Applicant has amended claims 1, 7, 21, 29, 35, 38, 50, 62, and 66. No new matter has been added. Accordingly, claims 1-8, 10, 12, 21-29, 31-38, 40-50, 52-56, and 62-68 are presently pending in the application, each of which Applicant believes is in condition for allowance. Applicant respectfully requests reconsideration in light of the following remarks.

Claim Rejections – 35 U.S.C. § 103

In the Action, Examiner rejected claims 1-8, 10, 12, 21-29, 31-38, 40-50, 52-56, and 62-68 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,078,956 to Bryant et al. (“Bryant”) in view of U.S. Patent No. 5,732,218 to Bland et al (“Bland”), and further in view of “A Survey of Web Caching Schemes for the Internet” by Jia Wang (“Jia Wang”). Applicant respectfully traverses these rejections for at least the following reasons.

Claim Rejections – 35 U.S.C. § 103

In the Action, Examiner rejected claims 1-8, 10, 12, 21-29, 31-38, 40-50, 52-56, and 62-68 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,078,956 to Bryant et al. (“Bryant”) in view of U.S. Patent No. 5,732,218 to Bland et al (“Bland”), and further in view of “A Survey of Web Caching Schemes for the

Internet” by Jia Wang (“Jia Wang”). Applicant respectfully traverses these rejections for at least the following reasons.

Claims 1-8, 10, 12, 21-29, 31-34, 42-50, 52-56, and 62-68

Independent claim 1 recites, *inter alia*, “including machine instructions with the distributed application data that define, independent of any other instructions, a performance monitoring function.” Similarly, independent claim 21 recites, *inter alia*, “including machine instructions with the Web page that define, independent of any other instructions, a performance monitoring function.” In addition, independent claim 42 recites, *inter alia*, a “Web page including machine instructions that cause, independent of any other instructions, [a] processing device to perform . . . a browser monitoring function.” Similarly, independent claim 62 recites, *inter alia*, “including machine instructions with [a] Web page . . . [that] perform[], independent of any other instructions, a browser monitoring function when executed by [a] client device.”

In contrast, Bryant, Bland, and Jia Wang, either alone or in combination, clearly fail to disclose, teach, or suggest including machine instructions with a Web page or other distributed application data that define, perform, or cause to perform, independent of any other instructions, a performance monitoring function, as required by independent claims 1, 21, 42, and 62 of the instant application. For example, while Bryant arguably teaches that “client-side JavaScript . . . [is] submitted to the client as part of the page” (Bryant, col. 9, ll. 1-2), the “client-side JavaScript” disclosed in Bryant does not “define,” “perform,” or “cause to perform,” independent of any other instructions, a performance or browser monitoring function.

The “client software” described in Bryant is not the same as the “client-side Javascript” that is “submitted to the client as part of the page.” As Bryant explains, “[t]he client software may be a computer program product implemented in a computer-readable medium or otherwise downloaded to the Web client over the computer network.” Col. 2, line 65 to col. 3, line 2. However, Bryant never states that this “client software” is part of the Javascript that is “submitted to the client as part of the page.”

In fact, Bryant explains that “Web client browsers that support the RSP [response time] cookie protocol are called instrumented browsers. For the rest of this discussion, it is assumed that the HTTP request originates from an instrumented browser.” Col. 6, ll. 5-9. Bryant also explains that such “instrumented browsers” may help create RSP cookies by “making a local timestamp when a request is made to the Web server.” Col. 7, ll. 60-65. Bryant also explains that an “instrumented browser” may create such a timestamp by “record[ing] the time when the [client] request is sent according to the time clock on the client system where the browser is running and store[ing] this value in storage local to the browser.” Col. 6, ll. 21-25.

Obviously, a “non-instrumented” or normal browser, as Bryant defines them, would be unable to record and store a local timestamp. In other words, Bryant teaches that the “client software” (which, as detailed above, is different from the “client-side Javascript” submitted as part of the requested page) must be installed on the client machine to “instrument” the browser in order to enable the browser to create and store local timestamps, which are later used to create RSP cookies, as explained in greater detail below.

The Examiner relies on col. 9, lines 1-14 in Bryant as allegedly stating that the “client software [is] . . . provided as part of the web page to the client when accessing a web page.” Advisory Action at 3. However, the script provided in this referenced section of Bryant clearly relies on a previously recorded timestamp created and stored by an instrumented browser. *Id.* (“document.cookie = “NETSCAPE.sub.--LIVEWIRE.last.sub.--rsp.sub.--time+(new Date()).getTime() -987666532”). Quite simply, without relying on a previous timestamp created and stored by external instructions (such as the previously installed client software), the Javascript “submitted to the client as part of the page” in col. 9, lines 1-14 in Bryant would not be able to calculate the desired response time.

For at least the forgoing reasons, Bryant clearly fails to disclose, teach, or suggest including machine instructions with a Web page or other distributed application data that define, perform, or cause to perform, independent of any other instructions, a performance monitoring function, as required by independent claims 1, 21, 42, and 62 of the instant application. Moreover, Applicant has been unable to identify within Bland or Jia Wang, nor has the Examiner alleged that Bland or Jia Wang contains, any teaching that remedies this deficiency.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach or suggest each and every limitation of claims 1, 21, 42, and 62, a *prima facie* case of obviousness has not been established. *See, e.g., In re Royka*, 490 F.2d 981, 985 (CCPA 1974) (holding that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art) (emphasis added); *accord.* MPEP § 2143.03 (“To establish a

prima facie case of obviousness ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.”) (emphasis added).

Moreover, aside from the novel limitations recited therein, claims 2-8, 10, 12, 22-29, 31-34, 43-50, 52-56, and 63-68 are also allowable at least by virtue of their dependency upon allowable base claims 1, 21, 42, and 62. Applicant respectfully requests, therefore, that the rejection of claims 1-8, 10, 12, 21-29, 31-34, 42-50, 52-56, and 62-68 under 35 U.S.C. § 103 be withdrawn, and these claims be allowed.

Claims 35-38, 40, and 41

Independent claim 35 recites, *inter alia*, a “browser monitoring function” that is “implemented without requiring any affirmative action by a user.”

Bryant, Bland, and Jia Wang, in contrast, clearly fail to teach or suggest a “browser monitoring function” that is “implemented without requiring any affirmative action by a user of the client device,” as required by these claims. Instead, Bryant merely teaches of automatically determining metrics, assuming the client software has been installed by a user. *See, e.g.*, Bryant, col. 9, ll. 15-28. For example, Bryant states that “the present invention is implemented with a client ‘piece’ [of] . . . software.” Bryant, col. 2, ll. 65-66. For the invention described in Bryant to function properly, the client software must be installed by a user. *See, e.g.*, Bryant, col. 6, ll. 6-8 (“For the rest of this discussion [specification], it is assumed that the HTTP request originates from an instrumented browser.”); *see also* Bryant, col. 6, ll. 4-8 (defining an “instrumented browser” as a browser with the client software installed and added to it). Thus, instead of implementing a browser monitoring function “without requiring any affirmative action by a user,” as required by independent claim 35, Bryant teaches that

the client software must be installed by a user to “instrument” the browser. Bland and Jia Wang both fail to remedy this deficiency.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach or suggest each and every limitation of claim 35, a *prima facie* case of obviousness has not been established. Moreover, aside from the novel limitations recited therein, claims 36-38, 40, and 41 are also allowable at least by virtue of their dependency upon allowable base claim 35. Applicant respectfully requests, therefore, that the rejection of claims 35-38, 40, and 41 under 35 U.S.C. § 103 be withdrawn, and these claims be allowed.

Claims 8, 27, 48, and 65

Dependent claim 8 recites, *inter alia*, “determining whether to collect a performance metric from the second site as a function of a specific performance metric that was determined at the second site.” Similarly, claim 27 recites, *inter alia*, “selectively accept[ing] a performance metric as a function of the kind of performance metric being transmitted to the data center.” Claim 48 recites, *inter alia*, “wherein the data center selectively accepts said at least one performance metric, based upon a specific kind of performance metric that is being transmitted to it for processing.” In addition, claim 65 recites, *inter alia*, “enabling the data center to selectively accept a performance metric as a function of the kind of performance metric being transmitted to the data center.”

In contrast, Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach, or suggest determining whether to collect or otherwise selectively accept a performance metric as a function of a specific performance metric determined

at a second site or as a function of a specific kind of performance metric, as required by these claims. Instead, Bland merely teaches that “each client’s browser extensions . . . collect[s] the data . . . only in response to a request received from a server.” Bland, col. 4, ll. 65-67. (emphasis added). Bryant and Jia Wang both fail to remedy this deficiency.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach, or suggest each and every limitation of claims 8, 27, 48, and 65, a *prima facie* case of obviousness has not been established. Applicant therefore respectfully requests that the rejection of these claims be withdrawn.

Claims 5, 25, 26, 46, and 47

Dependent claim 5 recites, *inter alia*, “wherein the probabilistic sampling parameter is applied on a per-site basis.” Similarly, dependent claims 25 and 46 recite, *inter alia*, “wherein the probabilistic sampling parameter is applied on a per-user basis.” In addition, dependent claims 26 and 47 recite, *inter alia*, “wherein the probabilistic sampling parameter is applied on a per-Web page basis.”

In contrast, Bryant, Bland, and Jia Wang, either alone or in combination, fail to teach or suggest applying a probabilistic sampling parameter on a per-site basis, on a per-user basis, and/or or a per-Web page basis, as is required by these claims. While Bryant may teach of random sampling of metrics, Bryant fails to disclose, teach, or suggest applying a probabilistic sampling parameter on a per-site basis, on a per-user basis, and/or or a per-Web page basis. For example, Bryant clearly states that “the server may choose to randomly sample the recorded response times and log only a subset of the times,” as opposed to applying a probabilistic sampling parameter on a

per-site basis, on a per-user basis, and/or or a per-Web page basis. *See* Bryant, col. 6, ll. 38-41 (emphasis added). While Bryant may teach of applying “[p]ostmortem analysis tools . . . [to] produce response time statistics per URL,” this merely refers to organizing produced statistics, as opposed to sampling data on a per-site basis, on a per-user basis, and/or or a per-Web page basis.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach, or suggest each and every limitation of claims 5, 25, 26, 46, and 47, a *prima facie* case of obviousness has not been established. Applicant therefore respectfully requests that the rejection of these claims be withdrawn.

Claims 32, 41, and 53

Dependent claim 32 recites, *inter alia*, “causing the browser monitor function to determine that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected.” Similarly, dependent claims 41 and 53 recite, *inter alia*, “determine[ing] that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected.”

In contrast, Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach, or suggest determining that at least one performance metric is to be determined for a Web page in response to a monitor cookie being detected, as required by these claims. Instead, Bryant teaches merely that a cookie may be used to record a current clock time. *See, e.g.*, Bryant, col. 8, ll. 14-15 (“The first line in this function records the current clock time in the cookie.”). Bland and Jia Wang both fail to remedy this deficiency.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach or suggest each and every limitation of claims 32, 41, and 53, a *prima facie* case of obviousness has not been established. Applicant therefore respectfully requests that the rejection of these claims be withdrawn.


Conclusion

For at least the foregoing reasons, Applicant believes that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicant respectfully requests a favorable action on the merits. If Examiner has any further comments or suggestions, Applicant invites Examiner to contact the undersigned attorney to expedite the handling of this matter.

Applicant expressly disclaims all arguments, representations, and/or amendments presented or contained in any other patent or patent application, including any patents or patent applications claimed for priority purposes by the present application or any patents or patent applications that claim priority to this patent application. Moreover, all arguments, representations, and/or amendments presented or contained in the present patent application are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application.

Respectfully submitted,

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